
(1993) 02 PAT CK 0012
In the Patna High Court
Case No : C.W.J.C. No. 5641 of 1992

Md. Asgar Ali Khan and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-02-1993

Acts Referred:

Citation : (1993) 02 PAT CK 0012

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—In this application the Petitioners have prayed for a declaration that the provisions for reservation contained in paragraph 5 of the prospectus of the Post Graduate Medical Admission Test, 1992 is violative of Articles 14 and 15(1) of the Constitution of India.

2. The fact of the matter lies in a very narrow compass.

3. The State of Bihar through the Controller of Examination of Health Services, Bihar Patna issued a prospectus for Post Graduate Medical Admission Test, 1992 for the students intending to be admitted in the post graduate degree and diploma course, in various colleges mentioned therein, which is contained in Annexure-1 to the writ application.

4. Clause (V) of the said prospectus provides for reservation of seats for various categories of candidates as per the decision of the Government. The reservation of seats for the reserved categories of candidates is in the following terms:

Scheduled Caste

14%

Scheduled Tribe

10%

Extremely Backward Class

14%

Backward Class

9%

Ladies

3%

5. The Petitioner has questioned the constitutionality of the aforementioned reservation policy of the State of Bihar inter alia on the ground that the same is violative of the directives of the Medical Council of India as well as Article 15(1) of the Constitution of India. It has further been contended that so far as Post-Graduate Medical Education is concerned, as the same is imparted for holding higher posts in Neuro Surgery, and other Super Speciality posts, the criteria for admission in the said course should only be on the basis of marks obtained at the entrance examination.

6. Mr. Banwari Sharma, learned Counsel appearing on behalf of the Petitioner has drawn our attention to Article 15 as also Articles 45, 45, 338, 340, 341 and 342 of the Constitution of India and submitted that the said provisions had been made in the Constitution for granting facilities to the members of the Scheduled Caste and Scheduled Tribe in various fields and thus in the field of higher education in medicine/surgery, no reservation of seats for the members of Scheduled Caste, Scheduled Tribe and Backward Classes can be made by the State of Bihar.

7. The learned Counsel submitted that the Scheduled Castes and Scheduled Tribes had been identified under the orders made under the Constitution but determination of Backward Class was not contemplated by the Constitution makers as would be evident from paragraph 3 of Article 338 of the Constitution of India.

8. It has also been submitted that all Backward Classes had to be assimilated with the Scheduled Castes and Scheduled Tribes and no third category could be carved out.

9. The learned Counsel in support of his contention placed strong reliance upon Gujarat University v. Shri Krishna reported in 1963 SC 703, Dr. Jagdish v. Union of India reported in 1980 SC 820, Pradeep Jain v. Union of India reported in 1984 SC 1420, K.C. Vasanth Kumar v. State of Karnataka reported in 1985 SC 1495, P. Rajendran v. State of Madras reported in 1968 SC 1012 and Surendra Kumar v. State of Bihar and Ors. reported in 1985 SC 87.

10. Mr. P.K. Sahi, the learned Government Pleader No. 7 on the other hand submitted that the Supreme Court in no case has held that no reservation can be provided for admission in post-graduate degree and diploma courses.

11. According to the learned Counsel as the Petitioner also concedes that a

reservation policy can be adopted by the State in respect of under-graduate medical courses and thus there cannot be any reason why the policy of reservation which has been introduced would be held to be invalid.

12. The learned Counsel further submitted that similar reservation policies of the Central Government as also the State Government has been tested by the Supreme Court on many occasions and their constitutionality have been upheld on the touchstone of Articles 14 and 15 of the Constitution of India.

The learned Counsel submitted that in this view of the matter, the Medical Council of India cannot be said to have any authority whatsoever to lay down any guideline for weeding out reservation of seats for Scheduled Castes, Scheduled Tribes and Backward Class candidates.

13. The question which, thus arises for consideration is as to whether the policy decision of the State in the matter of reservation of seats for Scheduled Castes, Scheduled Tribes and Backward Class candidates in Engineering and Medical education is permissible in law?

14. Article 15(4) of the Constitution reads as follows:

Nothing in this article or in Clause (2) of the Article 29 shall prevent the State from making any special provision for the advancement of any specially and educationally Backward Classes of citizens or the Scheduled Castes and the Scheduled Tribes.

15. It cannot be disputed that the aforementioned provisions justify reservation of seats for Scheduled Castes, Scheduled Tribes and socially and economically Backward Classes of citizens.

Clause 4 of Article 15 of the Constitution of India is special provision in derogation of the fundamental rights of the citizens provided under Clause 1 of Article 15 of the Constitution.

16. In this writ application it has not been contended that the criteria is adopted by the State of Bihar in classifying Backward Class category I and category II are illegal or they do not satisfy the requirements of law.

What is, however, contended by the learned Counsel appearing on behalf of the Petitioner is that admission of students in M.D. and super speciality courses should be based on merits of the respective candidates and in relation thereto, no reservation in terms, of Article 15(4) of the Constitution of India is permissible.

17. Clause 4 of Article 15 was inserted by reason of Constitution (First Amendment) Act, 1951 in order to nullify the decision of the Supreme Court of India in *The State of Madras Vs. Srimathi Champakam Dorairajan*, .

18. Article 15(4) authorises the State to make any special provision for the advancement of the Backward Classes of the citizens, the object being to make a

special provision to carry out the Directive Principles enshrined under Article 46 of the Constitution. The said provision read with Articles 29(2), 46 and 342 from a group of Articles making special provisions for the advancement of any specially and educationally Backward Classes of citizens or for Scheduled Castes and Scheduled Tribes.

19. In *Balaji v. State of Mysore* reported in AIR 1963 SC 619 it has been held that political freedom and even fundamental rights have very little meaning and significance for the Backward Classes as also the Scheduled Castes and Scheduled Tribes unless the backwardness from which they suffer are immediately redressed.

20. The power of the court to interfere with an executive order of the State is limited. The court may interfere inter alia in a case where reservation of the Backward Classes is so excessive that the national interest is likely to be jeopardised by overlooking the consideration of merits and efficiency but that is not the case of the Petitioner herein.

21. However, Mr. Sharma, has placed strong reliance upon certain observations made by a Division Bench of the Supreme Court of India in *Dr. Jagadish Saran and Others Vs. Union of India (UOI)*, . In that case 70% reservations were made at the post-graduate level for the students applicants who had taken their M.B.B.S. degrees from the University of Delhi.

The question as to whether there can be a University wise reservation fell for consideration and in that context the Supreme Court held:

A caveat or two may be sounded even in this approach lest exception should consume the rule. The first caution is that reservation must be kept in check by the demands of competence. You cannot extend the shelter of reservation where minimum qualifications are absent. Similarly, all the best talent cannot be completely excluded by wholesale reservation. So a certain percentage which may be available, must be kept open for meritorious performance regardless of university, State and the like. Complete exclusion of the rest of the country for the sake of a province, wholesale banishment of proven ability to open up, hopefully, some dalit talent, total sacrifice of excellence at the altar of equalization - when the Constitution mandates for everyone equality before and equal protection of the law - may be fatal folly, - self defeating educational technology and antinational if made a routine rule of state policy. A fair preference, a reasonable reservation, a just adjustment of the prior needs and real potential of the weak with partial recognition of the presence of competitive merit - such is the dynamics of social justice which animates the three egalitarian articles of the Constitution.

Flowing from the same stream of equalism is another limitation. The basic medical needs of a region or the preferential push justified for a handicapped group cannot prevail in the same measure at the highest scales of speciality where the best skill or talent, must be handpicked by selecting according to

capability. At the level of Ph. D., M.D. or levels of higher proficiency where international measure of talent is made where losing one great scientist or technologist in the making is a national loss, the considerations we have expanded upon as important lose their potency. Here equality measured by matching excellence, has more meaning and cannot be diluted much without grave risk. The Indian Medical Council has rightly emphasised that playing with merit for pampering local feeling, will be cometange Midgetry, where summitry is the desideratum, is a dangerous Article we may here extract the Indian Medicial Council's recommendation, which may not be the last word in social wisdom but is worthy of consideration. Students for postgraduate training should be selected strictly on merit judged on the basis of academic record in the under graduate course. All selection for post-graduate studies should be conducted by the University.

(Underlining is ours for emphasis)

However, the Apex Court also observed:

We hasten to keep aloof from reservations for Backward Classes and Scheduled Castes and Tribes because the Constitution has assigned a special place for that factor and they mirror problems of inherited injustices demanding social surgery which is applied thoughtlessly in other situations may be a remedy which accentuates the malady.

Pathak, J. (as the learned Chief Justice then was) who delivered a separate judgment also observed:

No question of Backward Classes, Scheduled Castes and Scheduled Tribes is involved because the criteria appertaining to reservation concerning them are, it seems to me, not relevant at all.

22. In that case the Supreme Court did not strike down the rule of reservation of 70% of seats for the students who had passed from Delhi University.. However it was observed that normally the recommendation of the Medical Council of India should be adhered to.

23. Jagdish Saran's case, thus is not an authority on interpretation of Clause 4 of Article 15 of the Constitution vis-a-vis Clause 1 thereto.

24. Saran was followed by Bhagwati, J. (as the learned Chief Justice then was), in Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, .

In paragraphs 23, 39, 44 of the Pradeep Jain's case, the judgment of Krishna Iyer, J. in Jagdish Saran's case had been referred to and it was held:

We are therefore of the view that so far as admission to post-graduate courses, such as M.S.M.D. and the like are concerned, it would be eminently desirable not to provide for any reservation based on residence requirement within the State or on institutional preference. But having regard to broader considerations of equality of opportunity and institutional continuity in education which has its own

importance and value, we would direct that though residence requirement within the State shall not be a ground for reservation in admissions to post-graduate course, a certain percentage of seats may in the present circumstances be reserved on the basis of institutional preference in the sense that a student who has passed M.B.B.S course from medical college or university, may be given preference for admission to the post-graduate course in the same medical college or university but such reservation on the basis of institutional preference should not in any event exceed 50% of the total number of open seats available for admission to the postgraduate course. This outer limit which we are fixing will also be subject to revision on the lower side by the Indian Medical Council in the same manner as directed by us in the case of admission to the M.B.B.S course. But even, in regard to admissions to the postgraduate course, we would direct that so far as super specialities, such, as neuro surgery and cardiology are concerned, there should be no reservation at all even on the basis of institutional preference and admissions should be granted purely on merit on all India basis. (Emphasis supplied)

25. In Pradeep Jain's case, the question which fell for consideration was as to whether on the basis of domicile or residence in a particular State for a specified number of years any reservation can be made irrespective of merit.

It is also pertinent to note that in recent decision in Miss. Mohini Jain Vs. State of Karnataka and others, , the Supreme Court while striking down the practice of certain medical colleges to charge capitation fees from the students held that merit alone should be the criteria.

26. However, as noticed hereinbefore, none of these cases, the question which arose therein was considered in the context of Article 15(4) of the Constitution of India.

27. Members of Scheduled Castes and Scheduled Tribes and the socially and educationally Backward Classes have occupied a special position in our Constitution. They had to endure great ill-treatment for centuries and the reversed discrimination contemplated by Clause (4) of Article 15 of the Constitution of India is justified not only because of their backwardness, but also on the ground that such discrimination is meant to right great historic wrong.

28. In M.R. Mini (Minor) Represented by her Guardian and Father M.P. Rajappan Vs. State of Kerala and Another, the claim by the Petitioner was that she being belonging to Kalikut district which is a backward district should be given the same benefit which had been given to the students of Kalikut University. It was held that the reservation was University-wise, Krishna Iyer, J. for himself and Pathak, J. (as his Lordship then was) held. Once we hold that University wise allocation of seats is valid, the misfortune of the Petitioner was *damnum sine injury* (see page 839).

29. In Surendra Kumar Vs. State of Bihar and Others, seats reserved for candidates of Bihar State for admission to medical colleges in State of Jammu

and Kashmir was struck down as nomination of candidates was to be, made by Government on the basis of selection by Chief Minister without any guideline whatsoever. In the said decision the Supreme Court relied upon its earlier decisions reported in AIR 1983 SC 1235 and AIR 1984 SC 322.

These decisions have also thus no application to the fact and circumstances of the present case.

30. In *K.C. Vasanth Kumar and Another Vs. State of Karnataka*, , the Supreme Court expressed its opinion on the issue of reservation which shall serve as a guideline to the Commission which the Government of Karnataka proposed for appointment for examining the question of affording better employment and education opportunities to Scheduled Castes, Scheduled Tribes and other Backward Classes. The Supreme Court upon consideration of various decisions and in particular *Balajee's case* (supra) and *State of Kerala and Another Vs. N.M. Thomas and Others*, held:

While we agree that competitive skill is relevant in higher posts, we do not think it is necessary to be apologetic about reservations in posts, higher or lower so long as the minimum requirements are satisfied. On the other hand, we have to be apologetic that there still exists a need for reservation. Earlier, we extracted a passage from *Tawhey's Equality* where he bemoaned how degrading it was for humanity to make such of their intellectual and moral superiority to each other. *Krishan Iyer, J.*, once again emphasised that Article 16(4) was one facet of the multifaceted character of the central concept on equality. One of us (*Chinnappa Reddy*, in the same case explained how necessary it was to translate the constitutional guarantees given to the Scheduled Castes, Scheduled Tribes and other Backward Classes into reality by necessary State action to protect and nurture those classes of citizens so as to enable them to shake off the heart crushing burden of a thousand year's deprivation from their shoulders and to claim a fair proportion of participation in the administration.

31. In *Minor P. Rajendran Vs. State of Madras and Others*, , it was held that the allocation of seats in the medical colleges on the basis of district to which candidate belong was not warranted by Article 15(4) but the court observed that persons belonging to a particular caste were also a class of citizens and if the caste as a whole is socially and educationally backward, reservation can be made in favour of such castes under Article 15(4) of the Constitution.

32. It is, therefore, clear that although there had been certain observations in certain decisions that merit alone should be the criteria for admission in post-graduate as also super-speciality course, but in view of Article 15(4) of the Constitution of India, the executive order reserving some seats for specially and educationally Backward Classes cannot be struck down only on the ground that they have not competed in merits with the general candidates. Even any direction to that effect by the Medical Council of India would be of no avail unless the determination of such socially and educationally Backward Classes by the

State becomes vulnerable as violative of Articles 14 or 15 of the Constitution of India.

In this connection the Phraseology used in Article 15(4) requires our notice which is of great significance, i.e. nothing stand in the way of the State from making any special provision for the classes mentioned therein, although there is no constitutional compulsions therefor.

33. We may, however, observe that even in Jagdish's case, Krishna Iyer, J., asked the question what is merit or excellence? and answered it thus:

Excellence is composite and the heart and its sensitivity are as precious in the scale of educational values as the head and its creativity and social medicine for the common people is more relevant than peak performance in freak cases.

It was further observed:

We are aware that measurement of merit is difficult and the methods now in vogue leave so much to be desired, that screening by marks as measure of merit may even be stark superstition.

Proceeding further, the learned Judge observed:

The heart was as much a factor as the head in assessing the social value of a member of the profession. Dr. Samuel Johnson put this thought with telling effect when he said want of tenderness is want of parts and is no less a proof of stupidity than of depravity.

Thus the meaning of "merit" may vary in different situations.

34. While observing that prima facie equal marks must have equal chances", Krishna Iyer, J., however, himself pointed out that in respect of backward region, the rule may be relaxed holding.

But it must be remembered that exceptions cannot overrule the rule itself by running riot or by making reservation as a matter of course, in every University and every course. "For instance, you cannot wholly exclude meritorious candidates as that will promote sub-standard candidates and bring about a fall in medical competence, injurious, in the long run to the very region. It is no blessing to inflict quacks and medical midgets on people by wholesale sacrifice of talent at the threshold. Nor can the very best be rejected from admission because that will be a national loss and the interests of no region can be higher than those of the nation. So within these limitations, without going into excess there is room for play of the State's policy choices.

35. It is, therefore, clear that the best talent cannot be completely excluded by wholesale reservation and a certain percentage which may be available must be kept open for meritorious performances regardless of the University, the State and the like.

36. The decision in Pradeep Jain's case was later on modified by the Supreme

Court in *Reita Nirankari v. University of Delhi* 1984 SC 1569 and explained in *Dinesh Kumar v. Motilal Nehru College* 1985 SC 1059 and 1986 SC 1877.

In *Pradeep Jain's* case (*supra*) it was held that in the matter of admission in medical colleges, merit can *inter alia* be departed from in order to remove *de facto* inequality.

It was held:

We cannot, therefore, have arid equality which does not take into account the social and economic disabilities and inequalities from which large masses of people suffer in the country. Equality in law must produce real equality, *de jure* equality must ultimately find its *raison d'être* in *de facto* equality. The State must, therefore, resort to compensatory State action for the purpose of making people who are factually unequal in their wealth, education or social environment, equal in specified areas. The State must use again the words of Krishna Iyer, J. in *Dr. Jagadish Saran and Others Vs. Union of India (UOI)*, "weave those special facilities into the web of equality which, in an equitable setting, provide for the weak and promote their levelling up so that in the long run, the community at large may enjoy a general measure of real equal opportunity...equality is not negated or neglected where special provisions are geared to the larger goal of the disabled getting over their disablement consistently with the general good and individual merit." The scheme of admission to medical college may, therefore, depart from the principle of selection based on merit, where it is necessary to do so for the purpose of bringing about, real equality of opportunity between those who are unequals.

37. In *State of Uttar Pradesh and Others Vs. Pradip Tandon and Others*, reservation for candidates for village area and Uttarkhand division was held to be valid.

38. In *Dr. Snehelata Patnaik and Others Vs. State of Orissa and Others*, weightage of a marks of 5% in favour of candidates who have done rural services for 5 years or more was suggested.

39. In the recent decision of the Supreme Court in *Indira Sahaney and Ors. v. Union of India and Ors.* reported in JT (1992) 6 (SC) 272, to which our attention has been drawn by Shri Sharma, the constitutionality of Mandal report was considered on the touchstone of Article 16 and not on Article 15(v) of the Constitution and has no relevance to the fact of this case.

40. From the discussion made hereinbefore it is absolutely clear that the Supreme Court had not only recognised the reservation policy of the State which comes within the purview of Article 15(4) of the Constitution, but has also upheld reservation of seats within reasonable limit University wise, statewide, or districtwise.

It is thus clear that the State has the right whether by way of legislation or executive instructions to reserve certain percentage of seats for Backward

Classes in terms of Clause 4 Article 15 of the Constitution of India. It has also power to reserve seats for other type of candidates so long it does not violate the constitutional guarantee of equality before law and equal protection before law as enshrined in Article 14.

41. We may however, observe that although at the time of admission the students belonging to socially and educationally Backward Classes may get some preference but they have to undergo the rigours of some standard of education set out by the Medical Council of India. They have to undergo the same course of training and will have to pass the examination held by the Universities.

42. For the reasons aforementioned, we hold that the policy of the State of Bihar to reserve seats for Scheduled Castes, Scheduled Tribes and Backward Classes in the matter of admission in post-graduate medical course is not unconstitutional.

43. In the result, this application is dismissed but in the facts and circumstances of the case, there will be no order as to costs.